

REMARKS

Applicant respectfully requests reconsideration of the application.

Claims 27-40 remain rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,014,569 to Bottum ("Bottum").

Claim 1 remains rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,740,244 to Indeck et al. ("Indeck").

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,205,249 to Moskowitz ("Moskowitz").

Claims 5-8, 10, 15-18, and 41-43 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Bottum.

Claims 2-4 and 23-26 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Indeck in view of U.S. Patent No. 5,923,327 to Smith et al. ("Smith").

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Indeck in view of U.S. Patent No. 5,581,800 to Fardeau et al. ("Fardeau").

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Indeck in view of Fardeau and further in view of Smith.

#### Claim 1

Applicant respectfully disagrees that Indeck teaches: "a watermark detector coupled to the transducer for producing payload information by extracting a digital watermark embedded in the electrical signals corresponding to the ambient audio" as claimed. The Office appears to be equating the claimed digital watermark with Indeck's fingerprint. However, Indeck's fingerprint is a measurement of remanent noise in a magnetic medium. This fingerprint is not embedded in the electrical signals corresponding to the ambient audio as claimed. For at least this reason, Indeck does not anticipate claim 1.

#### Claims 2-4

Claims 2-4 stand rejected over Indeck and Smith. Smith does not teach the elements of claim 1 that Indeck lacks as described above, and therefore, claims 2-4 are patentable over the combined teachings of Indeck and Smith.

### Claim 5

Claim 5 stands rejected over Bottum. However, Bottum does not teach: “discerning from the audio the plural bit audio ID.” While Bottum may teach an audio ID as cited by the Office, Bottum does not teach or suggest discerning the audio ID from the audio as claimed. In response to Applicant’s arguments, the Office cites col. 2, lines 18-31, col. 5, lines 19-33 and col. 6, lines 26-41 as allegedly showing that Bottum’s audio ID is decoded from audio. Upon further study of Bottum, it is clear that Bottum’s audio ID is separate from the audio itself and is never derived from the audio itself. The cited passage in col. 6 merely suggests that the audio ID is stored along with audio data in the audio data storage unit so that particular audio can be retrieved from the storage unit when an audio ID is provided. Bottum provides no teaching on how to “discern from the audio the plural bit audio ID” as claimed.

Applicant’s submit that the Office is improperly expanding what is described in col. 6, lines 27-41 of Bottum. The Office contends that Bottum’s audio ID is decoded from the audio because it allegedly teaches that the “audio ID is derived from the audio data in which audio ID comparison is made in order to properly authenticate and play audio data.” The Office further contends that “this suggests that in order to extract audio ID, it must be decoded.” A much more plausible suggestion from this passage in Bottum is that the audio ID is stored along with the audio data in the storage unit and used to retrieve the desired audio. This suggestion implies that it is not necessary to derive or discern an audio ID from the audio itself. Regardless, it is clear that Bottum provides no specific teachings on how to derive or discern an audio ID from the audio. The Office’s speculation of how Bottum might identify audio in the storage unit does not establish persuasively what this reference teaches to one of skill in the art.

### Claims 6-8

Claims 6-8 are patentable over Bottum for the same reasons as claim 5.

### Claim 9

In rejecting claim 9, the Office takes Official Notice that DOI is well known in the art. Applicant has submitted an IDS with information about DOI. The Office has not established a prima facie case of obviousness because it has not established that it would have been obvious to

use the specific DOI approach to encode a plural bit binary watermark payload as a Digital Object Identifier. The Office has not established that Moskowitz or existing information about DOI would lead one of ordinary skill in the art to encode a Digital Object Identifier as a watermark payload as claimed. Moreover, the Office has provided no basis for its conclusion that DOI is well known in the art relevant for the claim at issue. As set forth in MPEP Section 2144.03, if Official Notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such notice must be clear and unmistakable.

#### Claim 10

Claim 10 stands rejected as being anticipated by Bottum. Bottum, however, does not teach generating a noise-like signal having a plural-bit location identifier encoded therein as claimed. While Bottum refers to various types of IDs, like an audio ID, subscriber ID, etc., none of these are generated in the form of a noise-like signal in which the identifier is encoded therein and aired through a loudspeaker as claimed. Therefore, Bottum fails to anticipate claim 10.

The Office takes Official Notice that “generating a noise-like signal” as claimed is well known. However, the Office has not established that this factual assertion is based on common knowledge. The Office merely states possible advantages of generating a noise-like signal without establishing why this aspect of the claim is allegedly well known. This form of hindsight analysis of advantages of the invention is not sufficient to establish that the claim elements are well known.

#### Claim 11

The combined teachings of Indeck and Fardeau fail to teach; “an interface coupled to an output of the processing system for receiving the identifier therefrom, and also coupled to the memory for receiving at least some of the user identification therefrom, for transmission to a relay station.” Indeck is cited as showing this aspect of claim 11 at col. 5, lines 21-34, but this passage of Indeck fails to teach the claimed interconnection and function of the claim elements including an interface, processing system, and “memory for receiving at least some of the user identification information therefrom, for transmission to a relay station” as claimed. Fardeau fails to teach these elements as well. The combination of Indeck and Fardeau fail to disclose or teach all of the elements of claim 11, and therefore, fail to render claim 11 obvious.

#### Claims 12-14

Claims 12-14 stand rejected over Indeck, Fardeau, and Smith. Smith does not teach the elements of claim 11 that Indeck and Fardeau lack, and therefore, claims 12-14 are patentable over the combined teachings of Indeck, Fardeau and Smith.

#### Claim 15

Claim 15 stands rejected over Bottum. Bottum fails to teach or suggest: “receiving from the processing system an audio ID decoded from the audio” as claimed. Bottum’s audio ID is not decoded from the audio. As indicated above for claim 5, the Office’s response to Applicant’s arguments are not persuasive. Bottum does not specifically teach an “audio ID decoded from the audio” as claimed, and does not suggest it either.

#### Claims 16-18

Claims 16-18 are patentable over Bottum for the same reasons as claim 15.

#### Claims 23-26

Claims 23-26 are patentable over Indeck and Smith because the combined teachings of Indeck and Smith fail to teach all of the limitations of these claims.

#### Claim 27

Claim 27 stands rejected as being anticipated by Bottum. Bottum fails to teach or suggest “receiving from the processor an identifier derived from the electronic signals” where the electronic signals correspond to received ambient music as claimed. In particular, Bottum fails to teach deriving an identifier from electronic signals corresponding to ambient music. Bottum’s audio ID is not derived from electronic signals corresponding to ambient music.

#### Claims 28-43

Claims 28-43 are patentable for the same reasons as claim 27 and include additional elements not disclosed in the cited art.

Concluding Remarks

The cited art fails to teach all of the elements of the claims and therefore, the claims are patentable over the cited art.

Date: January 5, 2005

**Customer Number 23735**

Telephone: 503-469-4800  
FAX: 503-469-4777

Respectfully submitted,

DIGIMARC CORPORATION

By



Joel R. Meyer  
Registration No. 37,677